IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.45/1997 & CROSS OBJECTION NO.5/1997

FIRST APPEAL NO.45/1997

North Goa Planning & Development
Authority, represented by its Member
Secretary, having office at
Mala Link Road, Panaji, Goa. .... Appellant.

V/s.

1. Shyamsunder Neogui, about 55 years
old, residing at Dattawadi, Mapusa,
Goa for self and as duly constituted
attorney of respondents 2 to 8.

2. Dayanand Z. Neogui,

3. Shripad Z. Neogui,

4. Rajaram Z. Neogui (deceased)

4.a) Smt. Nila Rajaram Neogui,
widow of the deceased
Rajaram Neogui, major aged
50 years,

4.b) Mr. Ritesh Rajaram Neogui,
son of Rajaram Neogui,
major aged 18 years.

4.c) Miss. Raksha Rajaram Neogui,
daughter of Rajaram Neogui,
major aged 13 years,
through her aforesaid mother,
Smt. Nita Neogui, as next
friend and guardian, all
residing at Dattawadi,
Mapusa, Goa.

5. Ulhas Z. Neogui,

6. Smt. Anuradha M. Halekar,

7. Smt. Vibha A. Gaundalkar,

8. Smt. Vijaya P. Kovlekar,

All major, residing at
Dattawadi, Mapusa, Goa.

9. State of Goa,

through Deputy Collector &
Land Acquisition Officer,
Collectorate, Panaji, Goa. ..... Respondents.

Mr. A.P. Lawande, Advocate for the appellant.

Mr. J.P. Mulgaonkar, Advocate for respondents No.1 to 8.

CROSS OBJECTION NO.5/1997

1. Shyamsunder Neogui, about 55 years
old, residing at Dattawadi, Mapusa,
Goa for self and as duly constituted
attorney of respondents 2 to 8.

2. Dayanand Z. Neogui,

3. Shripad Z. Neogui,

4. Rajaram Z. Neogui (deceased)

4.a) Smt. Nila Rajaram Neogui,
widow of the deceased
Rajaram Neogui, major aged
50 years,

4.b) Mr. Ritesh Rajaram Neogui,
son of Rajaram Neogui,
major aged 18 years.

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daughter of Rajaram Neogui,
major aged 13 years,
through her aforesaid mother,
Smt. Nita Neogui, as next
friend and guardian, all
residing at Dattawadi,
Mapusa, Goa.

5. Ulhas Z. Neogui,

6. Smt. Anuradha M. Halekar,

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8. Smt. Vijaya P. Kovlekar,

All major, residing at
Dattawadi, Mapusa, Goa.

9. State of Goa,
through Deputy Collector &

Land Acquisition Officer,
Collectorate, Panaji, Goa. ..... Applicants.

V/s.

North Goa Planning & Development
Authority, represented by its Member
Secretary, having office at
Mala Link Road, Panaji, Goa. .... Respondent.

Mr. J.P. Mulgaonkar, Advocate for the applicant.

Mr. A.P. Lawande, Advocate for the respondent.

CORAM : D.G. DESHPANDE, &
P.V. HARDAS, JJ.

DATE : JANUARY 8, 2003.

ORAL JUDGMENT : (Per DESHPANDE, J.)

The first appeal is filed by the acquiring body, challenging the acquisition in Land Acquisition Case No.79/92, wherein the District Judge, Panaji granted Rs.257/- per sq. metre for the acquired land. The cross objection is filed by the original claimants or the owners of the land, claiming enhancement of the compensation from Rs.257/- to Rs.415/- per sq. metre.

2. We have heard Mr. Lawande, Advocate for the appellant/acquiring body and Mr. Mulgaonkar, Advocate for the original claimants.

3. By Government Notification issued under Section 4(1) of the Land Acquisition Act, 1894 ("L.A.

Act" for short) and published in the Official Gazette dated 15.1.1986, the Government had acquired 40,400 sq. metres of area from Chalta No.160 of P.T. Sheet No.86, situated in City Survey, Panaji ('suit plot'). The Land Acquisition Officer had awarded compensation at the rate of Rs.132/- per sq. metre. Therefore, the owners made a reference under Section 18 of the L.A. Act. The owners mainly relied upon three awards, two of which were in respect of some portion of the same land and one sale deed wherein the price paid by the purchaser was Rs.600/- per sq. metre. The claimant/ applicant No.1 examined himself in support of their contention and the acquiring body examined two expert witnesses.

4. The District Judge, Panaji found that the compensation granted by the Land Acquisition Officer was not proper and after considering the three earlier awards, but disregarding the sale deed relied upon by the applicants, fixed the compensation at Rs.257/- per sq. metre.

5. In the first award dated 24.10.1979, the price of the land was fixed at Rs.80/- per sq. metre. In the second award dated 9.5.1985, the price was fixed at Rs.275/- per sq. metre. In the third award dated 13.3.1986, the price was fixed at Rs.335/- per sq. metres. The sale deed which was relied upon by the

original owners/claimants dated 8.4.85 was in respect of 800 sq. metres of land and the price therein of Rs.600/- per sq. metre was not considered because it was in respect of a developed plot of land, situated in a crowded locality. These are the admitted facts.

6. Mr. Lawande contended that though the District Judge was justified in relying upon the earlier Awards, the said awards should not be said be conclusive while determining the price because in the first award no reasonings were given for fixing the price at Rs.80/-. He further contended that the appreciation of the property on annual assumption basis was also not proper. He contended that the claimants/owners did not prove at all whether the land had any building potential, because, admittedly, the land was a low lying area, as according to the appellant before this Court, it was 1.5 metres below the road level and according to the owners/claimants it was 0.8 metre below the level of the road. Mr. Lawande contended that the land was a marshy land and the owners had not reaped any benefit from the said land. He further contended that if the land was to be used for construction purposes, huge amount was required to be spent and though the trial Court has given certain deductions on that score, no deductions were given for development of area, viz. compulsory reservation of land for roads, open space,

etc. He contended that the earlier two awards even though they were pertaining to the portion of the very same land, the same could not be made basis for awarding compensation because the area acquired at that time was much lesser in size. In the third award, it was an area of about 4400 sq. metres and in the second award, the area acquired was about 1700 and odd sq. metres. He contended that the size of the plot was a criteria to be decided while fixing the compensation. He relied upon the Judgment of the Supreme Court in support of his contention and ultimately concluded that: firstly for failure on the part of the claimants/owners to prove that the land was building-worthy and construction-worthy; secondly for the failure on the part of the claimants/owners to prove any other instance of sale deed and thirdly for want of reasonings in the award for fixing the compensation in the earlier cases and for not taking into consideration the vacant land, which was required to be left for development of the present area of 40,400.00 sq. metres, the compensated granted is liable to be reduced.

7. Mr. Mulgaonkar, the Counsel for the claimants/owners contended that against all the three awards referred to and relied upon by the trial Court, the State has not preferred any appeal challenging the award. Therefore, this Court should not go behind the

Awards and find out whether the said Awards are right or wrong. Secondly, he contended that if the second and the third Awards were in respect of the very same survey numbers, then two standards could not be applied while fixing the compensation. Thirdly, he contended that a school building has been erected in the land acquired, which shows that the land is construction-worthy and looking to the proximity of the area to the school, highway, temple, hospital, and the bus-stop he contended that whatever compensation awarded is not required to be interfered with, but, on the other hand, it is liable to be enhanced to Rs.415/- per sq. metre as prayed in the Counter Claim. Mr. Mulgaonkar, Counsel for the owners/claimants contended that the Sale Deed dated 8.4.1985 was relevant and ought to have been considered.

8. So far as the counter claim in respect of enhancement is concerned, we are not inclined at all to allow the claim of the claimants/owners for enhancement. The sale deed dated 8.4.1985 was, firstly in respect of a very small portion of land i.e. 800 sq. metres, and secondly, the applicant/owner himself admitted in the cross examination that the said piece of land admeasuring 800 sq. metres was situated in a developed area, in a crowded locality. Admittedly, the land under acquisition is not in a crowded locality. It is not a developed land. On the contrary, it is a marshy land

where water is logging through out the year according to the acquiring body and for 10 months according to the owners. No other data is made available to this Court why the compensation should be enhanced from the one granted. Therefore, the claim in the cross objection, has to be rejected.

9. So far as claim of the acquiring body for reduction of the compensation is concerned, the same also cannot be allowed. The argument of Mr. Lawande that the earlier awards should not be taken into consideration for want of reasonings, cannot also be accepted because the three awards had been passed, two out of which were related to the portion of the very same land under acquisition. The second and the third awards were based on the first award and in respect of any of those awards, the State has not filed any appeal challenging those Awards. Now, therefore, at this juncture, when the trial Court has relied upon those three awards, this Court, sitting in appeal, cannot question the legality and validity of those awards. We cannot decide whether those awards were legal, valid or proper.

10. It is needless to say that there is some justification in the submission of Mr. Lawande that the assumed annual escalation in the second award of 25 %

for the first year and 10 % for the second year, is not correct. Still, this Court is not sitting over those awards, in appeal, and, therefore, that argument cannot be accepted or given our effect.

11. While fixing the compensation at Rs.257/- per sq. metres, the trial Court took into consideration the rate of 335/- per sq. metre, granted in the third award. But, while arriving at the figure of Rs.257/-, the trial Court also took into consideration the expenses that would be incurred for providing drainage to make the land construction-worthy and the concession in that regard was given in the so called expenditure of Rs.31,50,000/-, which comes to Rs.78/- per sq. metre. Therefore, this amount of expenditure was deducted from the price of Rs.335/- per sq. metre and the figure of Rs.257/- per sq. metre was arrived at by the trial Court. We, therefore, do not find any illegality in the reasonings, and the compensation arrived at by the trial Court.

12. Mr. Lawande relied upon a Judgment of the Supreme Court in the case of **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer, Poona and another,** A.I.R. 1988 S.C. 1652, wherein the Supreme Court has given certain guide-lines or has given factors to be considered while fixing the compensation, out of which

Mr. Lawande, stressed upon guide-line No.13 and minus factors given in guide-line No.15, which read as follows:

"(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors

1. Smallness of size.

2. Proximity to a road.

3. frontage on a road.

4. nearness to developed area.

5. regular shape.

6. level vis-a-vis land under acquisition.

7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) .....

Minus factors

1. largeness of area.

2. situation in the interior at a distance form the road.

3. narrow strip of land with very small frontage compared to depth.

4. lower level requiring the depressed portion to be filled up.

5. remoteness from developed locality.

6. some special disadvantageous factor which would deter a purchaser."

13. In the aforesaid background of the Supreme Court's Judgment, Mr. Launder, contended that smallness of size was a plus factor, so also largeness of area was a minus factor. The lower level requiring the depressed portion to be filled up, was a minus factor. He, therefore, contended that since the earlier two acquisitions were in respect of small portions of land

namely 4000 and odd sq. metres and 1700 and odd sq. metres and the present acquisition was in respect of 40,400 sq. metres, the minus factors were required to be considered.

14. It is true that the area under acquisition is large area, namely 40,400 sq. metres. However, it is equally true that the earlier two acquisitions were part and parcel of the very same land from the same survey numbers, namely being marshy land, or land inundated in water most of the time, but construction-worthyness was a criteria. When this reference came up before this Court, a school building was constructed and typography of the acquired land was such that it had access from the main road, and had the facilities available in town, namely temple, hospital, bus-stop, etc.

15. So far as the level of the land is concerned, according to the owners/claimants, it was 0.8 metre below the road level, but according to the acquiring body, it was 1.5 metres below the road level. But nothing is brought on record to show that while constructing the school building, the level of the land was brought to the level. In the absence of such evidence, the consideration of concession given by the trial of Rs.31,50,000/- for providing drainage, appears

to be a proper criteria in the circumstances of the case.

16. Mr. Lawande, however, contended that looking to the large area of the acquired land, if development is to be carried out, land for roads and for other purposes will have to be reserved and concession should have also to be given on that count. However, the crucial question is when in the two awards i.e. the second and the third award, the compensation was fixed at Rs.275/- and 335/- per sq. metre and when the trial Court while considering the present reference, fixed the amount at Rs.257/- after giving concession to the amount spent for drainage i.e. Rs.31,50,000/-, whether this Court should further reduce the amount of compensation and we do not find any justification in doing so because, the two awards which were in respect of the area out of the acquired land, are binding.

17. For all these reasons, the First Appeal is dismissed, so also the counter claim. In the circumstances, there will be no orders as to costs.

D.G. DESHPANDE, J.

P.V. HARDAS, J.